In the Matter of License No. A-22076 and all other Seaman Documents
Issued to: EDWARD N. POWELL

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1007

EDWARD N. POWELL

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 13 March 1957, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's seaman documents upon finding him guilty of negligence. The specification alleges that while serving as operator on board the American Motorboat LILLIAN C under authority of the document above described, on or about 11 January 1957, Appellant contributed to a collision between his vessel and the Motorboat CAPTAIN JACK by failing to keep a proper lookout.

After considering the evidence presented at the hearing, the Examiner announced his decision. He concluded that the charge and one specification had been proved. Two other specifications were dismissed. An order was entered suspending all documents, issued to Appellant, for a period of three months.

FINDINGS OF FACT

On 11 January 1957, Appellant was employed as the operator on board the American Motorboat LILLIAN C and acting under authority of his Motorboat Operator's License No. A-22076 when this vessel collided with the Motorboat CAPTAIN JACK in the Mississippi River Delta. The collision occurred early in the morning, during darkness, off the west bank in a straight stretch of the river across from Pilottown where the river is approximately three-quarters of a mile wide. The weather was clear and the visibility good. The bow of the LILLIAN C, a 51-foot cabin cruiser of 38 gross tons, struck the port quarter of the 31-foot long CAPTAIN JACK and two of the three passengers on the latter motorboat received minor injuries.

The LILLIAN C was operated by the Off Shore Boat Rental Service, Inc., in the Gulf of Mexico and Mississippi River for the purpose of carrying crews, as passengers for hire, between the shore and the quarter boats for offshore drilling rigs. The currently effective Certificate of Inspection of the LILLIAN C classed her as a passenger motorboat allowed to carry 32 passengers and required to have a crew of two licensed motorboat operators and two deck hands. The certificate also provided that only one licensed operator and one deck hand were required when the motorboat was operating not more than 12 hours in any one day.

At approximately 0300 on 11 January 1957, the LILLIAN C left the quarter boat in East Bay, proceeded through Joseph Bayou into Southwest Pass, and then into the Mississippi River headed for Venice on the west bank above Pilottown in order to change the boat crew. Appellant and one deck hand were the only persons on board. Upon entering the river, the deck hand wiped away the water which was running down the inside of the three forward windows (referred to as windshields) which were kept closed. The deck hand then went below and remained there. Appellant stood at the wheel steering the motorboat and acting as lookout while the LILLIAN C proceeded up the river at a speed of about 18 knots.

The CAPTAIN JACK departed from Venice with her navigation lights burning. She intended to proceed down the river and out through Southwest Pass to East Bay. She continued on her course making approximately 18 knots at a distance of about 700 feet from the west bank until the collision occurred. The operator of the CAPTAIN JACK saw the red and green side lights of the LILLIAN C on

his port bow at a distance of about three-quarters of a mile slightly more than a minute before the accident. The operator of the CAPTAIN JACK turned the wheel hard right just before the collision took place. There was no change of speed.

Appellant saw the outline of the CAPTAIN JACK off the starboard bow a "matter of seconds" (Appellant's testimony, R. 54) before the collision. The LILLIAN C was on the west side of the river heading toward the west bank as the two motorboats approached each other on converging courses. Appellant did not have time to sound any whistle signals. He tried to change course to starboard before his vessel struck the other one on the port quarter. At the time of impact and afterward, Appellant saw the all around white light on the CAPTAIN JACK but he did not consciously observe any of her properly burning running lights prior to the collision. The damaged CAPTAIN JACK immediately maneuvered close to the west bank where she was beached. Her personnel left by the stern to go on board the LILLIAN C. The two injured men were taken to Venice for treatment. The LILLIAN C was not damaged and neither of the two men on board was injured.

Appellant has no prior disciplinary record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the Coast Guard has no jurisdiction in this case because Appellant was not acting under authority of his license at the time of the collision; there is not sufficient evidence to support the finding that Appellant contributed to the collision by failing to keep a proper lookout; it was prejudicial error for the Examiner to hear testimony concerning an alleged test of the CAPTAIN JACK's lighting equipment on 21 February 1957.

APPEARANCES: Messrs. Lemle and Kelleher of New Orleans, Louisiana, by Charles E. Lugenbuhl, Esquire, and Shirley C. Friend, Jr., Esquire, of Counsel.

OPINION

It is my opinion that the contention that the Coast Guard has no jurisdiction in this case is without merit. Appellant questions the jurisdiction because disciplinary action for negligence under 46 U.S.C. 239 must be predicted upon a seaman having been acting under the authority of his license, certificate or document at the time of the offense (46 CFR 137.01-15). It is contended that Appellant was not acting under the authority of his license at the time of the collision because there were no passengers on board and the Motorboat Act (46 U.S.C. 526), which applies to vessels under 65 feet, requires a licensed operator only "while carrying passengers for hire.

I do not agree with this contention because the record shows that the LILLIAN C was regularly engaged in the business of carrying passengers for hire and Appellant was employed to act as one of the operators of the vessel when she was on trips carrying passengers. Since a licensed operator was required on such trips, it is apparent that Appellant's possession of a motorboat operator's license was a condition of employment and that he would not have been hired without the license. Therefore, it is my conclusion that Appellant was, in fact, acting under authority of his license within the meaning of 46 U.S.C. 239 although he was not legally required by the terms of the Motorboat Act to have a license when no passengers were on board. This reasoning applies because Appellant was rendering services for which he was hired as a result of his having a license even though at the particular time in question he was not proceeding to pick up passengers in accordance with a previously arranged schedule. This view is expressed in Commandant's Appeal No. 491 and other decisions.

In the presence of this clear-cut basis for taking jurisdiction, it is not necessary to discuss the efficacy of the manning requirements contained in the LILLIAN C's Certificate of Inspection. Ordinarily, the crew complement set forth in the Certificate of Inspection of a mechanically propelled vessel "above 15 gross tons" carrying passengers for hire would be binding whenever the vessel is being navigated. 46 U.S.C. 222, 404. *The* latter statute has been amended to apply, in part, to vessels "above 15 gross tons and in excess of 65 feet in length carrying passengers for hire" but this amendment of 10 May 1956 will not be effective until 1 June 1958 or later. The LILLIAN C is 38 gross tons but only 51 feet in length. Regardless of the extent of the

present application of 46 U.S.C. 404 to vessels over 15 gross tons and under 65 feet, the Certificate of Inspection classification of the LILLIAN C as a passenger motorboat substantiates the other evidence that she was regularly employed as a passenger vessel and should be navigated by a licensed operator.

Concerning the merits of the case, there is ample evidence to show that Appellant negligently failed "to keep a proper lookout" as required by the Inland Rules of the Road, Article 29 (33 U.S.C. 221). As pointed out by the Examiner, the Supreme Court has for many years emphasized that "the duty of the lookout is of the highest importance . . . [and] in the performance of this duty the law requires indefatigable care and sleepless vigilance." The *Ariadne* (1871), 13 Wall. (80 U.S.) 475, 478.

By his own admission, Appellant failed to comply with the standard of care required by the courts. Appellant testified that he did not observe the CAPTAIN JACK until a "matter of seconds" before the collision although she was on a steadily approaching course from ahead. The evidence indicates that the CAPTAIN JACK's running lights were on when she left Venice and Appellant admits that he was able to see her all around white light at the time of collision and afterward. Hence, there is no apparent reason why a vigilant lookout, properly stationed, would not have seen the other motorboat's lights in time to avoid a collision on a clear night such as this one. If Appellant's view was obscured by water running down the forward windows, as had happened earlier, Appellant was not stationed where he could keep a proper lookout. He was required to have ordered the deck hand to stand the lookout watch or wipe the windows clean so that Appellant's view was unobstructed. Again, as stated by the Examiner in the words of the Supreme Court, Appellant failed conspicuously to see what he ought to have seen and this, unexplained, is conclusive evidence of a defective lookout. *The New York* (1899), 175 U.S. 187, 204.

Appellant's testimony that the collision occurred near the east bank of the river, while his vessel was heading upstream, is weak because there is no reason why the operator of the CAPTAIN JACK would run his vessel a half mile or more across the river to ground her. The evidence fairly establishes that the LILLIAN C veered across the river and was headed for the west bank in the

path of the other motorboat when the accident happened.

What has been said above about the navigation lights of the CAPTAIN JACK disposes of Appellant's claim that it was prejudicial error for the Examiner to hear testimony about a test of this motorboat's lighting equipment on 21 February 1957. This testimony was received subject to objection and later ordered by the Examiner to be stricken from the record because the two witnesses called were employees of the owner of the CAPTAIN JACK. In view of the other evidence indicating that the lights of the CAPTAIN JACK were functioning properly after she got underway from Venice on the night of the collision, the burden was on Appellant to rebut this. On the contrary, he partially corroborated it. Consequently, if the original taking of this testimony concerning the lighting equipment tests constituted any slight prejudice to Appellant's cause, it was not reversible error.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 13 March 1957, is AFFIRMED.

A.C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 12th day of March, 1958.

***** END OF DECISION NO. 1007 *****

Top